

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

PUBLIC COPY

FILE: [REDACTED] Office: El Paso

Date: JAN 13 2004

IN RE: Obligor:
Bonded Alien:

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section
103 of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:

Identifying data related to
privacy
invasion of personal privacy

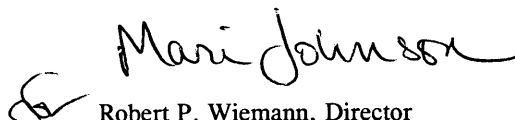
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, El Paso, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on August 29, 2002, the obligor posted a \$12,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated June 12, 2003, was sent to the co-obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 10:00 a.m. on July 3, 2003, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On August 4, 2003, the field office director informed the obligor that the delivery bond had been breached.

The present record contains evidence that a properly completed questionnaire with the alien's photograph attached was forwarded to the obligor with the notice to surrender pursuant to the Amwest/Reno Settlement Agreement, entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

On appeal, counsel asserts that the Form I-340 is untimely because it was received by the obligor on June 24, 2003 with a surrender date of July 3, 2003, in that service of the Form I-340 within 10 days of the surrender date constitutes unreasonable notice.

The evidence of record indicates that the Notice to Deliver Alien was sent to the co-obligor on June 12, 2003 via certified mail. This notice demanded that the obligor produce the bonded alien on July 3, 2003. The domestic return receipt indicates the co-obligor received notice to produce the bonded alien on June 23, 2003. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

Counsel's argument that 10 days notice of the surrender date is reasonable moots this appeal, as the alien received 10 days notice. Further, counsel's assertion that the Form I-340 was not timely served is without merit. In *International Fidelity Ins. Co. v. Crosland*, 516 F. Supp. 1249 (S.D.N.Y. 1981), the court determined that the surety received sufficient notice even though it did not receive the demand notice until one day before it was required to produce the alien.

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field office director will not be disturbed.

ORDER: The appeal is dismissed.